sufficiently aware of the pawn transaction so that it could have specifically included it in §922(a)(6) if it so desired (just as it did in §922(j)).

Concerning the legislative history cited by the Government, it should be noted that the Government does not cite one Congressional Report — either House or Senate — having a bearing on the Section in question. On the other hand, petitioner cited numerous specific instances in Senate and House reports that indicated with clarity that §922(a)(6) was limited to *sales*. The only legislative materials the Government brings to this question are some scattered, general comments in the course of the hearings and debates on various firearms bills.

An example is the Government's reliance on the testimony of Attorney General Clark before the House hearings considering Title IV. Government Brief at 9 n.8. The Government cites this testimony to support the self-evident, but irrelevant, proposition that Title IV in general covers delivery of firearms. Such a general statement does not clarify the specific provision in question. Again it only confirms the fact that Congress could have, if it desired, used a broader term in §922(a)(6) than it did.[4]

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[4] Moreover, it is noteworthy that in his testimony Attorney General Clark also confirms petitioner's contention that the bill was not intended to register or record firearms owned or possessed prior to the 1968 law and that the only records would be those for subsequent purchases. This purpose would be frustrated by requiring pawn redeemers to fill out Form 4473 at their peril.

The following is a colloquy between Congressman McClory and Attorney General Clark, Hearings Before Subcommittee No. 5 of the House Committee on the Judiciary, 90th Cong., 1st Sess., pp. 373-374 (1967):

"Mr. McClory . . . . Let me ask this question. Is it not the purpose of this legislation to provide a record to the Federal Government of every person who owns or possesses any kind of a firearm whatsoever?

Another example is the Government's reliance on the testimony of Mr. James V. Bennett, Director of the Federal Bureau of Prisons, in testimony before the Senate Subcommittee to Investigate Juvenile Delinquency. This testimony is cited by the Government, at page 11 of the Government's Brief, to support the contention that Congress was concerned with pawn redemptions. However, a reading of Mr. Bennett's testimony makes it clear that Mr. Bennett, as well as the Senators at the Hearing, were concerned with firearm *sales* by pawnbrokers, not redemptions by people who pawn guns at pawnshops.[3]

"Mr. Clark. No; it would not accomplish that. It does not reach the guns that are presently in private ownership . . . .

"Mr. McClory. In other words every dealer would be licensed and the dealer would be required to keep records, would he not, which would be available for inspection by the Secretary of the Treasury, which would give information with regard to every sale of firearms covered in the legislation?

"Mr. Clark. That is correct.

"Mr. McClory. The only limitation, then, would be with regard to sales that have taken place prior to the time that this law would become effective?

"Mr. Clark. Plus subsequent private sales that were not made by licensed dealers. But it is an enforcement device. This is how you determine the compliance with the law."

[3] Mr. Bennett vividly describes numerous instances of gun *sales* by pawnbrokers to criminals. Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 89th Cong., 1st Sess., pp. 3367, 3368, 3369, 3370, 3373, 3374, 3380 (1965). As he stated: "It is a simple matter for anyone of fairly mature appearance to buy a handgun at pawnshops . . . ." (Emphasis added). *Ibid.* at 3376.

As stated by Senator Keating, in responding to Mr. Bennett's description of such sales by pawnbrokers:

"Senator Keating. Your candor is refreshing, and it is just wonderful to hear such a frank statement from a witness. I fear as a lawyer that there might be a question of equal protection of the laws involved in charging one license fee for one in selling guns who was not a pawnbroker and one who was, but I get your point . . . ." (Emphasis added). *Ibid.* at 3380.

C. THE FACT THAT PAWNBROKERS ARE INCLUDED AS LICENSED FIREARMS DEALERS DOES NOT INDICATE THAT THE TERM ACQUISITION IN §922(a)(6) WAS MEANT TO INCLUDE REDEMPTIONS FROM PAWN BY THE PAWNOR.

There is no dispute that pawnbrokers were specifically included in the Omnibus Crime Control and Safe Streets Act of 1968 as firearms "dealers". However, this fact does not in any way support the Government's conclusion that redemptions are "acquisitions". If anything, it confirms the fact that Congress was concerned with firearm sales in §922(a)(6). And the failure in the Government's logic is indicated by the legislative material on which the Government relies, as well as by an understanding of the nature of the pawnbroker business.

Pawnbrokers are included within the coverage of the statute by virtue of the fact that they are defined as a "dealer". Section 921(a)(11) defines "dealer" to mean:

> "(A) any person engaged in the business of selling firearms or ammunition at wholesale or retail, . . . or (C) any person who is a pawnbroker."

The Government argues that the only reason pawnbrokers were separately included in this definition was specifically to cover the pawn *redemption*, because pawnbrokers would already be encompassed within part (A) of the definition of dealer. For the reasons discussed *infra*, this argument and its underlying assumption are unsound. Furthermore,

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See also the statement of Carl L. Perian, Staff Director for the Subcommittee, in response to Mr. Bennett's discussion of pawnbrokers' selling of guns and Mr. Bennett's recommendation that pawnbrokers should be regulated: "Mr. Perian. To insure that the guns they sell do not get into irresponsible or criminal hands." (Emphasis added). *Ibid.* at 4383.

the legislative history cited by the Government to support this contention is to the contrary. That is, the focus of Congressional concern was on sales of firearms by pawnbrokers — not redemptions. The Government cites the testimony of Mr. David Cohen, President of the Pawnbrokers Association of the City of New York, before a Senate Subcommittee. Government Brief at 12-13. The Government asserts that this testimony shows that pawnbrokers were included in the law to cover pawn redemptions. The error in this reasoning is not only apparent from reading the testimony quoted in the Government's Brief, but becomes even more apparent from reading the entirety of the testimony referred to, but not quoted, by the Government:

"Actually a pawnbroker is not a person engaged in the business of buying and selling at wholesale or retail and therefore is not a dealer. Pawnbrokers simply lend money on the basis of a pledge and our experience in New York is that close to 90 percent of pledges are redeemed. Where a pledge is not redeemed, it may, after a statutory period of time, be sold at public auction and, of course, the pawnbroker may bid to protect his equity. A fair proportion of firearms (rifles and shotguns) which are sent to auction are sold and only the remainder are purchased by the pawnbroker for ultimate outlet in his shop." (Emphasis on material omitted by Government).

As the testimony of Mr. Cohen indicates, pawnbrokers are engaged in the business of lending money — not selling firearms. Congress, therefore, may have thought, as did Mr. Cohen, that a person who is engaged in the lending business might not be considered to be "engaged in the business of selling firearms . . . at wholesale or retail."

[1] Hearings Before the Subcommittee to Investigate Juvenile Delinquency of The Senate Committee on the Judiciary, 90th Cong., 1st Sess., p. 1042 (1967).

However, as the Government points out, Congress was concerned with sales by pawnbrokers. Therefore, to clarify any uncertainty — an uncertainty supported by the fact that sales by pawnbrokers are at most merely incidental to their business — Congress specifically included pawnbrokers within the definition of a "dealer." Moreover, Congress could well have been concerned that even if pawnbrokers were found to be "engaged in the business of selling firearms" within the meaning of part (A) of the definition of "dealer," the unique character of foreclosure sales (such as the auctions described by Mr. Cohen) might not be considered "selling . . . at wholesale or retail." To avoid this uncertainty, Congress specifically included a pawnbroker within the definition of "dealer".[1]

Consequently, it does not follow from the specific inclusion of pawnbrokers within the definition of dealer in §921 that Congress intended to subject a pawn redemption to the coverage of §922(a)(6). First, Congress may have been concerned with other aspects of the pawnbroker's business — such as buying stolen firearms. See 18 U.S.C. §922 (j). Congress was also aware of the dual aspect of a pawnbroker's business. The primary business of the pawnbroker, as indicated by the testimony of Mr. Cohen, is the lending of money. The normal pawn transaction, when completed, merely restores possession of the pawned item

[1] Congress may also have been concerned with the possibility of sales of used firearms by pawnbrokers through foreclosure auctions. See, e.g., the testimony of Mr. James Vernor which is cited in the Government's brief at 11. Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, 85th Cong., 1st Sess., pt. 2, at 1 (1957). "Here is one fellow who went in and wanted a Mauser which for a gun. He did not have any money. He could not go out in a legitimate store to dealer, I want to bring them [pawnbrokers] under Federal firearms regulations, because a great many guns do not come through the mails that get in possession. They go through a pawnbroker's office."

and brings about a return to the status quo. When a firearm is involved, the redemption returns the firearm to the original possessor — it does not either increase the circulation of firearms or place firearms in the hands of new possessors. As a result, absent positive indications to the contrary, it is rational to assume that Congress did not intend to include a redemption in §922(a)(6).

On the other hand, Congress was aware of the fact that the pawnbroker-lending business may involve a foreclosure sale which results in possession of the pawned item by a new party unrelated to the pawnor. Petitioner submits that it is this sales transaction, and only this transaction, that Congress intended to encompass within §922(a)(6). To ensure coverage of such sales, Congress specifically included a pawnbroker within the definition of a "dealer". As noted above, it is reasonable to assume that this specific inclusion was due to uncertainty as to whether pawnbrokers were "engaging in the business of selling" and, if so, whether such "selling" was "at wholesale or retail". Petitioner submits that there is no support for attributing a broader purpose to Congress as a result of the inclusion of pawnbroker within the definition of "dealer"; and that there is ample support, such as the testimony of Mr. Cohen and Mr. Bennett cited by the Government,[9] for the fact that Congress was concerned *only with sales by pawnbrokers—not redemptions.*

In short, the obvious fact that pawnbrokers are covered by Title IV does not indicate any Congressional intent — much less a clear intent — to control the pawnor's redemption of the firearm he pawned. Indeed, the legislative history cited by the Government only confirms petitioner's

[9] See footnotes 6 and 8, *supra*, and Government Brief at 11, 12, and 13.

contention that Congressional concern in §922(a)(6) was with gun *sales* — whether by retail gun stores, by hardware stores, or by pawnshops."[10]

D. INCLUDING PAWN REDEMPTIONS WOULD NOT PROMOTE THE PURPOSES OF THE LAW.

The Government suggests that including a pawn redemption in §922(a)(6) would promote the purposes of the statutory scheme. This is little more than a request for this Court to legislate a phobibition that Congress chose not to enact. In any case, as indicated in petitioner's brief, including the pawn redemption within §922(a)(6) would not materially further those interests cited by the Government. Indeed, such an application would contravene an essential element of that legislation by resulting in de facto registration or confiscation of currently owned firearms."[11]

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[10] The numerous debates in the Senate regarding Title IV of The Omnibus Crime Control Act, cited by the Government, support this contention. For example, when Senator Dodd, who sponsored the bill, made his initial address, he referred continually to gun *sales*. 114 Cong. Rec. 12303 (May 8, 1968). Indeed, Senator Dodd even stresses sales when he explains the recordkeeping requirements of the bill, of which §922(a)(6) is a part. As he stated, 114 Cong. Rec. 12309:

> "The fourth major provision of Title IV requires that all *purchasers* of firearms from Federal licensees be required to identify themselves by name, address and age. This does not seem to me to be very much to ask.
>
> . . .
>
> "Title IV also provides that the licensee would have to record the identity of the *purchaser* and maintain this record in his files." (Emphasis added.)

[11] The absence of an intent to register firearms through the 1968 gun law is clear in the various Senate debates cited in the Government's Brief. As Senator Clark stated, 114 Cong. Rec. 12483: "The bill does not deal with gun permits or registration . . . ." See also the colloquy quoted above, n.5, between Attorney General Clark and Congressman McClory.

The Government's argument that it would be beneficial to require all pawn redeemers to fill out Form 4473 or lose their firearms is merely a request by the Government to legislate a gun control law that Congress did not pass. Obviously Congress had a variety of restrictions it could have enacted to restrict firearm possession. For example, Congress might have required confiscation of all firearms possessed by felons or the registration of said firearms. But Congress did not. It passed only a limited law. And despite the desires of the Justice Department and the Treasury Department for stricter controls than Congress passed, this should be left to Congress — not the Courts.

As indicated in petitioner's brief, the Justice Department and the States do have sufficient enforcement devices to prevent persons such as petitioner from possessing a firearm — if that is their goal. A pawn transaction is an open, public transaction, and the legality of a pawnor's possession can be easily resolved in a straight-forward trial for illegal possession under 18 U.S.C. App § 1202(a) or other unlawful possession statutes such as 26 U.S.C. § 5861(d).

Indeed, in light of such cases as *United States v. Craven*, 478 F.2d 1329 (C.A. 6 1973), where the proof necessary for conviction for illegal firearm possession has been held to be quite minimal, the Government's alleged need for expanding the scope of § 922(a)(6) is even more questionable. In *Craven*, mere constructive joint possession of a firearm was held to be sufficient; and this possession was held to be sufficiently demonstrated only by a showing that the guns were found in a house "constructively possessed" jointly by the defendant, that the guns were in a room which the defendant had "constructive joint possession of," and that the defendant made oral admissions after arrest that he was a gun collector.

Under the *Craven* decision, a pawnor could be convicted for illegal possession based upon the pawn transaction itself. The facts for such a conviction exist before the redemption ever takes place. Furthermore, no essential element of proof would be supplied by the pawnor's completion of Form 4473 upon redemption. Nor is any real element of deterrence to repossession added by use of the Form upon redemption. The felon intent upon repossessing his firearm will not be deterred by being asked to fill out Form 4473. In short, the Government has the tools to prosecute for illegal possession, if such is the case; the Government should not be allowed to circumvent such a normal prosecution by an unnecessary and unwarranted extension of §922(a)(6).

E. THE BASIC FALLACY OF THE GOVERNMENT'S POSITION.

In essence, the Government's position is that §922(a)(6) applies to *any transfer* of a firearm from a licensed firearm dealer to anyone. See Government Brief at 12 note 5. The Government in effect argues that the term "acquisition" is infinite in its meaning. Thus, the transfer by the dealer to a clerk for processing, the transfer to a warehouse for storage, the transfer to an assessor for inspection, or a transfer for cleaning, would all be subject to §922(a)(6). Each such transfer would therefore require the execution of a Form 4473, and the recipient would be liable for any false oral or written statements. If Congress intended such a broad meaning, Congress certainly did not make it evident by use of the term "acquisition". The term "acquisition" connotes something narrower than mere physical transfer. Rather, when viewed against the legislative history, the term connotes a sale or some other change in possession which results in a new person becoming the

possessor of the firearm for his own unlimited purposes. Thus, if petitioner's firearms had been forfeited by default on the loans and were sold to another person, that person would be "acquiring" the firearms and could be required to complete Form 4473. Petitioner, however, was simply repossessing the same firearms that he pawned.

CONCLUSION

Petitioner submits that the legislative materials cited in the Government's Brief confirm petitioner's interpretation that the term "acquisition" is limited to sales. At the very least, the Government's Brief affirms petitioner's contention that the term "acquisition" is ambiguous. Furthermore, petitioner submits that the Government's arguments for construing "acquisition" broadly are not only unfounded, but contravene the basic intent of the federal gun control legislation and the rule requiring narrow construction of criminal statutes.

Respectfully submitted,

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Attorneys for Petitioner

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1973

WILLIAM C. HUDDLESTON, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 1973, three copies of the Reply Brief For Petitioner were sent by air express delivery to:

Department of Justice
Office of the Solicitor General
Washington, D. C. 20530
Counsel for Respondent

I further certify that all parties required to be served have been served.

Respectfully submitted,
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By _____
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HUDDLESTON *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 72-1076. Argued November 7, 1973—Decided March 26, 1974

Petitioner, a previously convicted felon, was convicted of violating 18 U. S. C. § 922 (a)(6), a part of the Gun Control Act of 1968, by falsely stating, in connection with the redemption from a pawnbroker of three guns petitioner had pawned, that he had not been convicted of a crime punishable by imprisonment for more than a year. The pawnbroker was a federally licensed firearms dealer. The Court of Appeals affirmed. Section 922 (a)(6) makes it an offense knowingly to make a false statement "in connection with the acquisition . . . of any firearm . . . from a . . . licensed dealer" and "intended or likely to deceive such . . . dealer . . . with respect to any fact material to the lawfulness of the sale or other disposition of such firearm . . . ." *Held:* Section 922 (a)(6) applies to the redemption of a firearm from a pawnshop. Pp. 819–833.

(a) Petitioner's contention that the statute covers only a sale-like transaction is without merit, since "acquisition" as used in § 922 (a)(6) clearly includes any person, by definition, who "comes into possession, control, or power of disposal" of a firearm. Moreover, the statutory terms "acquisition" and "sale or other disposition" are correlatives. It is reasonable to conclude that a pawnbroker might "dispose" of a firearm through a redemptive transaction. Finally, Congress explicitly included pawnbrokers in the Gun Control Act, specifically mentioned pledge and pawn transactions involving firearms, and did not include them in the statutory exemptions. Pp. 819–823.

(b) That pawnshop firearms redemptions are covered by the challenged provision comports with the legislative history of Title IV of the Omnibus Crime Control and Safe Streets Act of 1968 and the Gun Control Act of 1968, which are aimed at controlling access to weapons by those whose possession thereof is contrary to the public interest, through a regulatory scheme focusing on the federally licensed firearms dealer. Pp. 824–829.

(c) Section 922 (a)(6) contains no ambiguity warranting a narrow construction in petitioner's favor, and application of the

statute to the pawn redemptions here raises no issue of constitutional dimension. Pp. 820–832.

472 F. 2d 962, affirmed.

BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, WHITE, MARSHALL, POWELL, and REHNQUIST, JJ., joined. DOUGLAS, J., filed a dissenting opinion, post, p. 832.

Harvey I. Saferstein argued the cause and filed briefs for petitioner.

Danny J. Boggs argued the cause for the United States. With him on the brief were *Solicitor General Bork*, *Assistant Attorney General Petersen*, and *Jerome M. Feit*.

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether 18 U. S. C. § 922 (a)(6),[1] declaring that it is unlawful knowingly to make a false statement "in connection with the acquisition . . . of any firearm . . . from a . . . licensed dealer," covers the redemption of a firearm from a pawnshop.

I

On October 6, 1971, petitioner, William C. Huddleston, Jr., pawned his wife's Winchester 30-30-caliber rifle for $25 at a pawnshop in Oxnard, California. On the following October 15 and on December 28, he pawned at

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[1] "§ 922. Unlawful acts.

"(a) It shall be unlawful—

. . . . .

"(6) for any person in connection with the acquisition . . . of any firearm . . . from a . . . licensed dealer . . . knowingly to make any false or fictitious oral or written statement . . . intended or likely to deceive such . . . dealer . . . with respect to any fact material to the lawfulness of the sale or other disposition of such firearm . . . under the provisions of this chapter."

the same shop two other firearms, a Russian 7.62-caliber rifle and a Remington .22-caliber rifle, belonging to his wife. For these he received loans of $10 and $15, respectively. The owner of the pawnshop was a federally licensed firearms dealer.

Some weeks later, on February 1, 1972, and on March 10, Huddleston redeemed the weapons. In connection with each of the redemptions, the pawnbroker required petitioner to complete Treasury Form 4473, entitled "Firearms Transaction Record." This is a form used in the enforcement of the gun control provision of Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 225, as amended by the Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213, of which the above-cited 18 U. S. C. § 922 (a)(6) is a part. Question 8b of the form is:

> "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter—a yes answer is necessary if the judge could have given a sentence of more than one year.)"

The question is derived from the statutory prohibition against a dealer's selling or otherwise disposing of a firearm to any person who "has been convicted in any court of . . . a crime punishable by imprisonment for a term exceeding one year." 18 U. S. C. § 922 (d)(1).[1] Petitioner answered "no" to Question 8b on each of the three

[1] "§ 922. Unlawful acts.

"(d) It shall be unlawful for any . . . licensed dealer . . . to sell or otherwise dispose of any firearm . . . to any person knowing or having reasonable cause to believe that such person—

"(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year."

Forms 4473. He then affixed his signature to each form's certification that the answers were true and correct, that he understood that a person who answers any of the questions in the affirmative is prohibited by federal law from "purchasing and/or possessing a firearm," and that he also understood that the making of any false statement with respect to the transaction is a crime punishable as a felony.

In fact, Huddleston, six years earlier, had been convicted in a California state court for writing checks without sufficient funds, an offense punishable under California law by a maximum term of 14 years.[1] This fact, if revealed to the pawnshop proprietor, would have precluded the proprietor from selling or otherwise disposing of any of the rifles to the petitioner because of the proscription in 18 U. S. C. § 922 (d)(1).

Huddleston was charged in a three-count indictment with violating 18 U. S. C. §§ 922 (a)(6) and 924 (a).[2] He moved to dismiss the indictment, in part on the ground that § 922 (a)(6) was never intended to apply, and should not apply, to a pawnor's redemption of a weapon he had pawned. This motion was denied. Petitioner then pleaded not guilty and waived a jury trial.

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[1] Cal. Penal Code § 476a (1970). The California complaint against Huddleston was in six counts and contained an allegation that he had been convicted previously in the State of Iowa of an offense which, if committed in California, would have been a violation of § 476 of the California Penal Code. He was eventually sentenced on the check charge to 30 days in jail.

[2] "§ 924. Penalties.

"(a) Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter, . . . shall be fined not more than $5,000, or imprisoned not more than five years, or both, and shall become eligible for parole as the Board of Parole shall determine."